

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AMERICAN FIRE AND CASUALTY  
COMPANY,

Plaintiff,

vs.

SKOUNTRIANOS DDS MS D/B/A  
ORTHODONTIC EXCELLENCE,

Defendant.

No. 3:21-cv-05601

COMPLAINT FOR COURT-APPOINTED  
UMPIRE FOR CONTRACTUAL  
APPRAISAL

COMES NOW Plaintiff American Fire & Casualty Company, by and through its attorneys of record, Sarah L. Eversole and John M. Silk of Wilson Smith Cochran Dickerson, and, by way of Complaint, alleges as follows:

**I. PARTIES, JURISDICTION AND VENUE**

1. Plaintiff American Fire and Casualty Company (“American Fire”) is a company organized under the laws of the State of New Hampshire with its principal place of business at 175 Berkeley Street, Boston, Massachusetts. American Fire is authorized to do business and does business in the State of Washington and in Pierce County, Washington. At all material



1 times hereto, American Fire provided a commercial fire insurance policy to Defendant  
2 SKOUNTRIANOS DDS, MS d/b/a ORTHODONTIC EXCELLENCE (hereinafter  
3 “Skountrianos”), covering its dental business.

4 2. Defendant Skountrianos is a Washington entity with its principal place of  
5 business in Puyallup, Washington.

6 3. This Court has jurisdiction over the subject matter of and persons to this  
7 litigation pursuant to 28 U.S.C. §1332 (a) because this action is between citizens of different  
8 states and the amount in controversy is nearly \$1,000,000, in excess of the statutory minimum.  
9 Further, the Court has jurisdiction pursuant to RCW 7.24.010, as the relief requested is  
10 declaratory in nature and there is a justiciable controversy between the parties. Venue is  
11 appropriate in USDC, Western District, at Tacoma pursuant to 28 U.S.C. §1391(b)(1) because  
12 the defendant dental office is located in Puyallup, Pierce County, Washington, which is located  
13 in this District.  
14

## 15 **II. FACTS**

16 4. American Fire issued Policy BZA (19) 57 74 95 94 to Skountrianos, effective  
17 May 1, 2018 to May 1, 2019, affording fire insurance covering the insured’s business.  
18 (hereinafter "the Policy").  
19

20 5. On September 9, 2018, there was a fire to the Skountrianos dental business and  
21 the building collapsed.

22 6. Within two weeks of the loss, Skountrianos moved into a new location  
23 approximately 2 miles from the first location. The second location was 200 square feet smaller  
24 than the old space. Skountrianos signed a three year lease, paying less rent than the original  
25 location. Unbeknownst to American Fire prior to adjustment of the business income claim,  
26



1 Skountrianos had also purchased the new location, and was leasing the dental equipment at this  
2 location to itself.

3 7. The Policy provided coverage for business personal property, tenant build out,  
4 and business income interruption coverage for up to 12 months.

5 8. American Fire made advances on the anticipated claims, including an advance  
6 of \$200,000 to Skountrianos for the potential business income loss.

7 9. The business personal property and tenant build out claims paid and resolved  
8 with no dispute.

9 10. Skountrianos disagreed with American Fire' measurement of the covered  
10 amount of Business Income (and Extra Expense) loss and American Fire and Skountrianos  
11 could not reach agreement on the amount owing for Business Income (and Extra Expense).

12 11. On or around January 31, 2021, Skountrianos invoked the Policy's contractual  
13 Appraisal provision via email, in order to resolve the parties' dispute as to the amount of covered  
14 loss under the Business Income (and Extra Expense) Coverage Form.

15 12. The contractual Appraisal provision in the Policy provides as follows:

16 **Appraisal**

17 If we and you disagree on the amount of loss, either  
18 may make a written demand for an appraisal of the  
19 loss. In this event, each party will select a competent  
20 and impartial appraiser.

21 The two appraisers will select an umpire. If they  
22 cannot agree, either may request that selection be  
23 made by a judge or a court having jurisdiction. The  
24 appraisers will state separately the amount of loss. If  
25 they fail to agree, they will submit their differences  
26 to the umpire. A decision agreed to by any two will  
be binding. Each party will:

a. Pay its chosen appraiser; and



b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

American Fire Policy, Business Income (and Extra Expense) Coverage Form, Form No. BP 00 03 07 13, ¶ D.1. *Loss Conditions – Appraisal*, at p. 28 of 61. A Copy of the Policy is attached as **Exhibit A** to this Complaint.

13. The Policy's Duties In The Event of Loss provision reads, in relevant part:

**3. Duties In The Event Of Loss Or Damage**

a. You must see that the following are done in the event of loss or damage to Covered Property:

\* \* \*

6. As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

\* \* \*

8. Cooperate with us in the investigation or settlement of the claim.

*Id.* at *Loss Conditions – Duties In The Event of Loss*, at p. 28 of 61.

14. Skountrianos advised that its selected appraiser was Luke Fisher of Veritas Forensic Accountants.

15. American Fire agreed to contractual appraisal and advised that its selected appraiser was forensic accountant Mike Vannucci of Meaden & Moore.

16. The parties' selected Appraisers did not agree on the proper measure of the loss.



1           17.     The parties Appraisers also could not agree on a suitable Umpire.

2           18.     Given the nature of the dispute, American Fire's appraiser requires that the  
3 selected umpire have direct experience with measuring economic damages and business  
4 interruption for commercial property losses. Skountrianos' appraiser prefers an umpire with  
5 more traditional mediator-type experience, and does not want a CPA.  
6

7           19.     In accordance with the policy, American Fire's appraiser has requested the  
8 selection be made by a court.

9           20.     Prior to the commencement of this suit, American Fire made one last attempt at  
10 finding mutually acceptable and qualified umpires that both appraisers would agree on. This  
11 effort was unsuccessful, requiring the subject Complaint.  
12

### 13                               **III. CAUSE OF ACTION**

14           21.     American Fire re-alleges and incorporates each and every allegation above.

15           22.     **Equitable Relief.** American Fire is entitled to a Court-appointed Umpire as an  
16 equitable remedy as a necessary condition for fulfillment of American Fire's rights under the  
17 contract of insurance (the "Policy"). The umpire should be a qualified CPA with direct  
18 experience in measuring economic damages or business interruption claims for commercial  
19 property losses.  
20

### 21                               **IV. PRAYER FOR RELIEF**

22           Wherefore, American Fire prays for relief against Defendant Skountrianos, as follows:

23           1.     For the Court to appoint a suitable Umpire with sufficient experience and  
24 expertise in handling the type of matter at issue. with sufficient legal and dispute resolution  
25 experience to fully carry out the duties of an Umpire under the insurance policy's contractual  
26 Appraisal provision;



3. For any and all further relief as the Court deems just and equitable to ensure the

DATED this 19<sup>th</sup> day of August, 2021.

s/Sarah L. Eversoles/John M. Silk

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